IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1161 of 2007

Peeti Ramesh @ Ramesh .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Chennai-9.

2. The Commissioner of Police
Greater Chennai
Egmore, Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus as stated therein.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the petitioner's detention order under Tamil Nadu Act 14 of 1982 made

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in Memo No.243/2007 BDFGISSV, dated 16.6.2007 on the file of the second respondent herein, to quash the same and to consequently direct the respondents to produce the body of the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and to set him at liberty.

3.1. The order of detention dated 16.6.2007 was passed on the basis of ground case in Crime No.334 of 2007 for alleged commission of offences under Sections 147, 148, 341, 336, 427, 395 read with 397, 506(2) and 307 IPC, complaint of which was lodged by one Dhanasekaran. According to Dhanasekaran, who himself is involved in murders and has come out on bail during 2006, there is prior personal enmity between the detenu and the complainant. On 29.5.2007 at about 0900 hours, when the complainant was proceeding at Ennore Express Road and 9th Street near Mahalingam Cool Drink Shop, the detenu and four of his associates wrongfully restrained him, threatened him and voluntarily inserted hand into his shirt pocket at the point of knife and took away Rs.1000/-. The detenu rushed to cut him over his neck, which the detenu warded off with his left hand, and the same caused bleeding injury to him. Huge crowd gathered at the spot. The complainant with the help of the public tried to apprehend the detenu and his associates, but they threatened them and picked up cool drink bottles and hurled the same on the road and created panic and the bottles fell on the road and broke into pieces. The public who were at the spot noticed the atrocious activities and ran hither and thither for safer places out of fear of danger to their lives and properties. The detenu and his associates escaped from the spot. Based on the complaint given by the complainant a case, as stated above, was registered and the Inspector of Police, after investigation, arrested the detenu and his associates on 29.5.2007 at 1230 hours.

3.2. Apart from the above, the detaining authority also took note of the four adverse cases pending against the detenu, viz., Crime Nos.41 of 2004, 436 and 824 of 2006, and 331 of 2007, all registered on the file of Ennore Police Station for the offences punishable under Sections 341, 326, 506(2), 307 read with 34, 294(b), 452, 147, 448, 427 and 506(2) IPC read with Section 3(1) of PPD Act.

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3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

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4. Heard both sides. We have perused the materials produced before us.

5. The main contention put forth by the learned counsel for the petitioner is that even though in paragraph (4) of the detention order it is stated that the detenu is in remand in Crime Nos.331 of 2007 (last adverse case, referred supra) and 334 of 2007 (ground case, referred supra), there is neither an iota of evidence to show that the detenu was arrested and remanded in Crime No.331 of 2007, nor any materials were supplied to the detenu in support of the said statement to enable him to make an effective representation, and therefore, the detention order passed, without considering the above vital fact is vitiated.

6. From a perusal of the records it is clear that in paragraph (4) of the order of detention dated 16.6.2007, it is stated that:

> "4. I am aware that Thiru Peeti Ramesh @ Ramesh is in remand in M5 Ennore Police Station Crime Nos.331/07 and 334/07 and he has moved bail applications before the Principal District and Sessions Court, Tiruvallur in Crl.M.P.Nos.1379/07 & 1380/07 respectively and the same were dismissed..."

But, as rightly pointed out by the learned counsel for the petitioner, no supporting materials available or placed before the detaining authority to justify the statement that the detenu was arrested and is in remand in Crime No.331 of 2007. Moreover, no such supporting materials were furnished to the detenu to enable him make an effective representation. To this extent, the detention order of vitiated.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 16.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The Commissioner of Police
Greater Chennai
Egmore, Chennai.

3.The Public Prosecutor
High Court, Madras.

4.The Superintendent, Central Prison, Puzhal, Chennai.

5. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

- 1 cc to Mr. G. Natarajan, Advocate SR No. 67165

NG(CO)
SR/22.11.2007

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